BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Steven D. McCoy & George M. Lowe Dist. 2, Map 48, Control Map 48, Parcel 46.00, S.I. 000 Residential Property Tax Year 2006	)) Johnson County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$280,800	-0-	$280,800	$70,200

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 17, 2006 in Mountain City, Tennessee. In attendance at the hearing were Steven McCoy and George Lowe, the appellants, Johnson County Property Assessor's representative B. C. Stout and Jess Conway of the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 3.2 acre tract located on South Shady Street in Mountain City, Tennessee.

The taxpayers contended that subject property should be valued at $180,000. In support of this position, the taxpayers introduced three comparable sales into evidence. In addition, the taxpayers asserted that the current appraisal of subject property does not achieve equalization given the assessor's appraisals of other parcels in the area. Finally, the taxpayers maintained that because subject property is below road level it will be necessary to do considerable filling. The taxpayers introduced a quote prepared by Maymead, Inc. indicating the cost to fill and compact subject tract would be $247,812.

The assessor contended that subject property should be valued at $280,800. In support of this position, the October 1, 2003 sale of a 2.74 acre tract to Elizabethton Federal for $260,000 was introduced into evidence. In addition, Mr. tout testified that in his opinion growth is occurring closer to the subject rather than "towards town."

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $280,800 based upon the presumption of correctness attaching to the decision of the Johnson County Board of Equalization.

Since the taxpayer is appealing from the determination of the Johnson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that comparable sales normally constitute the best evidence of the fair market value of vacant land. Respectfully, the administrative judge finds that the sales introduced by the taxpayers occurred between 1994 and 1998. Given the fact January 1, 2006 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a), the administrative judge finds that sales from the 1990's are simply too remote in time to have probative value.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

> In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

The administrative judge has no doubt that subject property will require fill in order to be developed. However, the administrative judge finds that the single quote introduced by the taxpayers does not constitute sufficient evidence to quantify any potential loss in value for several reasons. First, the individual who prepared the quote was not present to testify or undergo cross-examination. The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar circumstances. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

> The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .
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> . . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Second, it is unclear how much of the acreage will actually require filling to the extent contemplated in the proposal. Presumably, one would have to determine the highest and best use of subject property in order to estimate the necessary amount of fill. Third, only a single estimate was introduced into evidence. Fourth, and perhaps most importantly, no evidence was introduced to establish what the market value of subject tract would be after filling it.

Based upon the foregoing, the administrative judge finds it technically unnecessary to address the assessor's proof since the taxpayers failed to establish a prima facie case. Indeed, the assessor could have moved for a directed verdict and not even offered proof.

As noted at the hearing, the administrative judge recommends that the Johnson County Board of Equalization review many of the appraisals discussed at the hearing. On the one hand, certain appraisals appear inadequate and/or inconsistent. For example, the Farmers State Bank parcel (2-48H-A-48I-16) sold for $400,000 on November 11, 2004, but was only appraised at $155,000 in conjunction with the 2006 countywide reappraisal program.[1] On the other hand, both taxpayers seemingly conceded in their testimony that subject property might very well sell for its current appraised value. The administrative judge finds the need to possibly correct a handful of appraisals does not constitute disparate treatment requiring adoption of a value other than market value.

[1] The $74,400 appraisal reflected on the property record card introduced by the taxpayers was for tax year 2005.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$280,800	-0-	$280,000	$70,200

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of November, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. George Lowe
Clarence Howard, Assessor of Property